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Error to Circuit Court, Prince Edward County.

Action by one Allen and others against the Norfolk & Western Railway Company. There was a judgment for plaintiffs, and defendant brings error. Affirmed.

Kirkpatrick & Howard, of Lynchburg, and *Marshall McCormick*, of Roanoke, for plaintiff in error.

E. Warren Wall, of Farmville, and *Coleman, Easley & Coleman*, of Lynchburg, for defendants in error.

KIRKPATRICK & HOWARD *v.* WARDEN et al.

Jan. 13, 1916.

[87 S. E. 561.]

1. Principal and Agent (§ 14*)—Who Are Agents.—Mortgage brokers to whom complainant applied for a loan required the furnishing of an abstract, and suggested that complainant consult a particular attorney, or any other reputable member of the bar. Complainant followed the suggestion, and the attorney designated prepared an abstract. Thereafter the deed of trust, together with a check to complainant's order, were sent to the attorney, and he was directed to see to discharged liens on the property according to the agreement to insure the property for the brokers' benefit and secure complainant's signature. Complainant, who acted at all times through another agent, signed the deed of trust and check, and allowed her second agent to deliver it to the attorney, who misappropriated it. Held, that the attorney was her agent, and the loss must fall on her instead of the mortgage brokers.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. §§ 26-33; Dec. Dig. § 14.* 1 Va.-W. Va. Enc. Dig. 245.]

2. Principal and Agent (§ 159*)—Torts of Agent.—In such case as complainant's act in indorsing the check and delivering it to the attorney, which was equivalent to the delivery of cash to him, rendered the misappropriation possible, she must bear the loss.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. §§ 599-612; Dec. Dig. § 159.* 1 Va.-W. Va. Enc. Dig. 260.]

Appeal from Circuit Court, Montgomery County.

Bill by Magnolia Warden and others against Kirkpatrick & Howard, trustees. From the decree against them, the trustees appeal. Reversed.

John S. Draper, of Pulaski, and *M. H. Tompkins* of Cambria, for appellant.

R. L. Jordan and *H. C. Tyler*, both of East Radford, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.